



CENAO-REG  
08-RP-19

## STATE PROGRAM REGIONAL PERMIT

Effective date: August 14, 2008

Expiration Date: August 14, 2013

**I. AUTHORIZED ACTIVITIES:** The following activities may be authorized under this Regional Permit ("Regional Permit 19", "RP"), subject to the conditions, limitations and descriptions set out further herein:

- ~~1. Submerged utility lines and associated dredging or excavation.~~
1. Aerial transmission lines and other overhead lines.
2. Groins, jetties, spurs and/or baffles and associated beach nourishment.
3. Maintenance dredging for previously authorized projects.
4. Bulkheads, riprap and associated backfill and/or excavation, including bulkhead repair and/or replacement, and bioengineering projects to prevent erosion.
5. Open-pile piers at community, commercial or government facilities for recreational or commercial use.
6. Boat ramps and accessory structures, including any fill or excavation for installation.
7. Recreational or Commercial boathouses and covered boat lifts.
8. Mooring piles/dolphins, fender piles and camels.
9. Crab pounds.
10. Submerged sills and associated beach nourishment.
11. Low breakwaters and associated beach nourishment.
12. Aquaculture/Mariculture activities.
13. Commercial moorings associated with a permitted project and temporary in nature.
- ~~15. State owned and operated artificial reefs within State waters.~~

**Comment [REG1]:** These activities are now authorized via the Regional Permit 20 (RP-20) and no longer need to be included in this permit.

**II. AUTHORITIES:**

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform certain work in waters of the Commonwealth as described further herein strictly subject to the conditions and limitations set out further herein.

It is noted, that the listed activities are usually of State or local impact only and that State or local agencies are the appropriate regulatory bodies. However, it is conceivable that in some instances the District Commander may determine that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR 325) for a particular project that might generally qualify for this RP. The Norfolk District will monitor the activities authorized under this RP in order to evaluate cumulative impacts.

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This RP does not authorize any work other than that which is specifically described and identified in this document. All work that does not comply with the following conditions, standards and limitations does not qualify for this RP and will require separate Department of the Army authorization.

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### III. STATE AND LOCAL APPROVALS:

1. In order for this RP-19 to be valid as to particular work, a person or entity seeking verification under this RP ("permittee", "applicant" or "prospective permittee") must obtain the following state and/or local approvals prior to commencement of such work in waters of the United States from:

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- VMRC and/or
- Local Wetlands Board

2. A Virginia Department of Environmental Quality (DEQ) authorization may be required unless a §401 Water Quality Certification has been provided for this RP, by the State Water Control Board, which certification serves as a determination that activities that qualify for this RP meet the Virginia Water Protection Permit Regulation. Any conditions which are made part of an applicable DEQ 401 certificate will automatically become part of this RP.

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3. Authorizations under this RP also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (the "Act") (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under 07-SPGP-01 do not obviate state or local government authority or responsibilities pursuant to the Act or to any State or local law or regulation.

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### IV. PROCEDURES

1. In order to obtain authorization for any of the activities covered by this RP, the applicant must complete a Joint Permit Application ("JPA").
2. If the proposed activity qualifies for this RP, the Corps will send the applicant a letter acknowledging the qualification and stating that the applicant must first obtain a permit (not a waiver) from the Virginia Marine Resources Commission and/or the local wetlands board before the proposed work may begin.
3. Those activities on the Potomac River extending beyond the mean low water line must be authorized by the Maryland Department of Natural Resources and/or the Potomac River Fisheries Commission in order to comply with this regional permit.
4. In the event the proposed project or any portion of the project receives a waiver (or exemption under the grandfather clause), the project would not qualify for this regional permit and an individual Corps permit will be required.

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**ACTIVITIES DO NOT QUALIFY FOR THIS REGIONAL PERMIT UNLESS, THEY SATISFY ALL OF THE SPECIAL AND GENERAL CONDITIONS LISTED BELOW:**

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### V. SPECIAL CONDITIONS:

## **1. Submerged utility lines and associated dredging or excavation:**

**Comment [REG2]:** This activity is being omitted from the RP-19 because these activities are authorized via the Nationwide Permit 12 (NWP-12).

- a. ~~For the purpose of this regional permit, a submerged utility line is defined as any pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. This regional permit encourages, where feasible, the use of directional drilling techniques for utility lines that otherwise meet the special conditions.~~
- b. ~~This regional permit does not include the dredging of access channels. No submerged utility line installation which involves either temporary or permanent stream rechannelization is authorized by this regional permit. Also, water intake and outfall structures are not authorized by this regional permit. Such work will require separate Department of the Army authorization.~~
- c. ~~When the blasting of bedrock is necessary in order to create a trench for the installation of a utility line, it shall all be performed within the same day, if possible. The Virginia Department of Environmental Quality, Water Division (at telephone (804) 527-5000) must be notified at least one week prior to blasting so that a representative may be at the site to observe blasting operations and evaluate fish kills, if necessary.~~
- d. ~~Utility lines should be routed to avoid disturbance to vegetated wetlands. Wetlands unavoidably impacted during the installation of the pipeline must be restored to their original elevation. Displaced herbaceous wetland species which do not naturally revegetate within one year from the completion of the project must be replanted to the satisfaction of the District Engineer.~~
- e. ~~Under this regional permit, no submerged utility line installation is authorized between 1 March and 30 June in portions of Virginia's river systems where anadromous fish spawning and nursery habitat have been documented. Applicants will be notified by the Corps of Engineers as to the applicability of this condition to their proposal.~~
- f. ~~Submerged utility lines shall be routed to minimize disturbance to beds of submerged aquatic vegetation. Under this regional permit, no utility line installation is authorized between 1 March and 30 June in areas where major beds of submerged aquatic vegetation occur. Communities of submerged aquatic vegetation impacted during pipeline installation must be restored to their original elevation. No dredged or excavated material shall be stockpiled on submerged aquatic vegetation beds. Applicants will be notified by the Corps of Engineers as to the applicability of this condition to their proposal.~~
- g. ~~Submerged utility lines must be adequately anchored in deep enough water or buried deep enough below the bottom to prevent their being a hazard to navigation.~~
- h. ~~The pouring of concrete for backfill of utility line trenches must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during seasonal low flow periods. The introduction of uncured concrete into surface waters is prohibited.~~
- i. ~~Note that the discharge of material for backfill or bedding for submerged utility lines is authorized by Nationwide Permit 12—Utility Line Backfill and Bedding, provided the requirements contained in the Norfolk District Regional Condition are met. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996. The Norfolk District Regional Condition is as follows: “Whenever possible, excavated material shall be placed on an~~

upland site. However, when this is not feasible, temporary stockpiling is hereby authorized provided that:

- (1) All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into the waterway.
- (2) The excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the utility line has been installed through the wetlands area. Permission must be granted by the District Commander or his authorized representatives if the material is to be stockpiled longer than 30 days."

j. ~~Note that the discharge of material for the construction of submerged utility transmission line footings is authorized by Corps Nationwide Permit 25—Structural Discharge. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996.~~

k. ~~Note that the discharge of material for the construction of temporary cofferdams is authorized by Corps Nationwide Permit 33—Temporary Construction, Access and Dewatering, provided the requirements contained in the "Notification" General Condition are met. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996.~~

~~Separate notification is not required for temporary cofferdams in association with submerged utility lines covered by this regional permit provided the application includes a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources as outlined in Nationwide Permit 33.~~

l. ~~For linear pipeline projects, the applicant must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under Section 9 of the Endangered Species Act.~~

## **2. Aerial transmission lines and other overhead lines:**

- a. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Minimum additional clearance above clearance required for bridges:

<u>Nominal system voltage (kilovolt)</u>	<u>Feet</u>
115 and below.....	20
138.....	22
161.....	24
230.....	26

350.....	30
500.....	35
700.....	42
750 to 765.....	45

- b. Clearances for communication lines, stream gauging cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Overhead lines which require fill may need separate authorization from the Corps. Projects which require dredging for construction access will not qualify for this regional permit.
- c. ~~Note that the discharge of material for the construction of aerial transmission line footings is authorized by Corps Nationwide Permit 25—Structural Discharge. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996~~
- d. ~~Note that the discharge of material for the construction of temporary access fills is authorized by Corps Nationwide Permit 33—Temporary Construction, Access and Dewatering, provided the requirements contained in the "Notification " General Condition are met. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996. Separate notification is not required for temporary access fills in association with aerial transmission lines covered by this regional permit if the application includes a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources as outlined in Nationwide Permit 33.~~
- e. In addition, the Federal Aviation Administration has responsibility for the marking of aerial transmission lines. Therefore, for those projects involving such work, an appropriate application should be submitted to the Federal Aviation Administration Eastern Regional Office, Air Traffic Division, JFK International Airport Federal Building, Jamaica, New York 11430 (Telephone 212-995-3390).
- f. For linear aerial transmission line projects, the applicant must supply the U. S. Fish and Wildlife Service with information concerning the intended route of the entire project so that they may, if necessary, exercise their authority under Section 9 of the Endangered Species Act.

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### 3. Groins, jetties, spurs, and/or baffles constructed along with and connected to groins and associated beach nourishment:

- a. For this regional permit, groins are defined as structures constructed perpendicular (or nearly so) to a shoreline and extending seaward from the shoreline for the purpose of accreting sand. Groins may merely stop further erosion of a shoreline or they may actually build a sand beach by trapping sand moving in the near shore zone. A jetty is a structure constructed perpendicular to the shoreline with the primary purpose of stabilizing and/or protecting an inlet or harbor. ~~which may appear similar to a groin, but whose primary purpose is to stabilize and protect an inlet or harbor. Jetties are not included in this regional permit.~~ Spurs and baffles are defined as short (less than 20 feet) structures constructed perpendicular to groins for the sole purpose of dampening diffracted wave energy. Groins and jetties may be constructed of quarry stone, gabion

**Comment [REG3]:** Authorization for the construction of jetties have been added to Activity #3. Groins and jetties will only be authorized via this permit if the proposed length will have only a minimal adverse impact on littoral drift.

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baskets, concrete or timber. As the design and location of groins and jetties are site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.

- b. This RP may authorizes beach nourishment landward of the groins provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this RP is one acre.
- c. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- d. The beach nourishment material will not be placed in or affect any wetlands, submerged aquatic vegetation or shellfish beds.
- e. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
- f. Please note that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the permittee seeks to either add to or replenish the area previously nourished, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.
- g. Special Conditions 1 - 8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

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#### 4. Maintenance dredging for previously authorized projects:

- a. This RP authorizes maintenance dredging of projects which received an individual Department of the Army permit for the initial dredging. Areas to be dredged and dredged depths shall not exceed those specified by the original authorization or exceed controlling depths for ingress/egress whichever is less. This RP does not eliminate the requirement to obtain a Virginia Water Protection Permit from the DEQ, Water Division for this activity.
- b. For maintenance dredging to qualify under this RP, the dredged material must be disposed of in an upland area which has been properly designed to contain the material.
- c. If the applicant proposes to use the Craney Island Dredged Material Management Area for placement of the dredged material, the special conditions which must be adhered to and forms which must be completed in order to use Craney Island must be added to this RP for those projects for which it applies. The permittee is advised that the prime contractor performing the dredging project must obtain a Real Estate license from the Norfolk District Real Estate Office prior to the commencement of any work which would utilize the Craney Island Dredged Material Management Area or Government Bulkhead

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Facilities at the Craney Island Rehandling Basin. The permittee/prime contractor should contact Mr. David Parson of the Norfolk District Real Estate Acquisition, Management, and Disposal Section at (757) 201-7736 for further information regarding the Department of the Army License. (Please note that there are restrictions on the use of Craney Island. You may call the Norfolk District at 757-201-7652 to determine if Craney Island can be used.)

- d. Under this RP, periodic maintenance dredging may be performed for five (5) years from the date of the acknowledgment letter in order to coincide with the expiration of the Virginia Marine Resources Commission maintenance dredging permit which is issued for a maximum of five (5) years.
- e. The Norfolk District must be advised in writing by the permittee at least two weeks before each maintenance dredging activity is undertaken so that the intended disposal area may be inspected. Disposal areas must be approved by the Norfolk District before use. Deleted: will
- f. Barges and scows used to transport dredged material may be filled only to a point where no overflow occurs. No overflow pipes are allowed.
- g. A copy of this permit must be on board the vessel used for the transportation and placement of the dredged material.
- h. Special Conditions 1-8 for Discharges apply to this activity if the dredging is performed by hydraulic method.

**5. Bulkheads, riprap and associated backfill and/or excavation, including repair and/or replacement of existing deteriorated bulkheads and bioengineering projects to prevent erosion:**

- a. The work must be necessary to address and remediate an existing erosion problem. Deleted: combat
- b. The total amount of vegetated wetlands which may be filled, in square feet, may not exceed the length of the activity along the shoreline in linear feet (e.g. 100 square feet maximum for a 100-foot-long bulkhead.) Deleted: must
- c. The structure and backfill must be placed as closely to the shoreline as is practicable. No material may be placed in excess of the minimum necessary for erosion protection.
- d. The activity must not impair surface flows.
- e. Only clean, non-metallic, non-organic, non-floatable fill may be used.
- f. The activity must be a single and complete project.
- g. This RP also covers all bulkhead repair and/or replacement up to two feet channelward of existing deteriorated bulkheads which are still functional. For sheet pile bulkheads, this shall generally mean that at least fifty (50) percent of the sheeting must be standing. This authorization includes no limitation on length, nor does it exclude bulkheads which may result in the filling of wetland vegetation as long as there is an apparent existing erosion



problem. As above, the total amount of vegetated wetlands which may be filled, in square feet, must not exceed the length of the activity along the shoreline in linear feet. This total does not include wetlands landward of the existing bulkhead. This portion of the work complies with Corps Nationwide Permit Number 3. The Corps Nationwide Permits and Conditions can be found in [the March 12, 2007, Federal Register notice \(72 FR 11092, 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996\)](#). The filling of wetlands behind free-standing bulkheads that have never been backfilled is prohibited as part of this permit, and will require an individual Department of the Army permit.

- h. For projects where bioengineering is to be utilized in lieu of bulkheading or riprap, grading or excavating wetlands shall be limited to one (1) square foot of vegetated wetlands per linear foot of shoreline.
- i. Special Conditions 1-8 for Discharges apply to this activity.

**6. Open-pile piers at community, commercial or government facilities for recreational or commercial use:**

- a. This authorization covers all open-pile piers, docks, wharfs associated with the construction or expansion of any community, commercial, or government facility whose primary use is commercial or recreational. This would include, but not be limited to, piers at seafood processing facilities, boat repair facilities, marine terminals, military installations or military associated operational facilities utilized for training, aggregate handling facilities, and other non-recreational facilities. (Marine railways are excluded from this regional permit.)
- b. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).
- c. This work does not qualify for the RP if it involves any dredging or filling. In that event, an individual Department of the Army permit will be required. If dredging is proposed, it may qualify for the District's Letter of Permission 2 (08-LOP-02).
- d. Special Conditions 9 and 10 for Structures apply to this activity.

**7. Boat ramps and accessory structures, including associated fill and excavation necessary for installation:**

- a. This RP covers all boat ramps (concrete or open-pile timber), whether private, public, commercial or government-owned. ~~Accessory structures are covered for all but private boat ramps.~~ For this RP, accessory structures include catwalks, pilings and small piers whose sole purpose is to make it easier to get boats into or out of the water. Permanent or semi-permanent mooring facilities are not covered.
- b. This permit authorizes excavation and/or filling within the limits of the boat ramp only (e.g. for bedding). Dredging or filling for access to the ramp is not covered under this regional permit and will require separate Department of the Army authorization.



Authorization of the boat ramp does not imply that a future dredging proposal to provide access to the structure would be approved.

- c. All boat ramps and accessory structures shall be located so as to eliminate or minimize impacts to vegetated wetlands.
- d. The pouring of concrete for the construction of boat ramps must be accomplished within a cofferdam unless the activity can be performed completely in the dry, such as during lake drawdown periods. The introduction of uncured concrete into surface waters is prohibited.
- e. Special Conditions 1-8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

#### **8. Recreational or commercial boathouses and covered boat lifts:**

- a. This authorization covers any boathouse or covered boat lift whose purpose is recreational or commercial.
- b. If the original purpose of the structure or facility changes, the permittee must submit a request for a permit modification (i.e. a recreational marina to a grain loading facility or coal handling facility).
- c. This work does not qualify for the regional permit if it involves any dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of the boathouse or covered boat lift does not imply that a future dredging proposal to provide access to the structure would be approved.
- d. Special Conditions 9 and 10 for Structures apply to this activity.

#### **9. Mooring piles/dolphins, fender piles and camels (wooden floats serving as fenders alongside piers):**

- a. This authorization includes all such structures, either isolated or part of large facilities, whose primary purpose is commercial or recreational. This would include, but not be limited to, mooring piles, dolphins, fender piles, and camels at seafood processing facilities, boat repair facilities, marine terminals, military installations and other non-recreational facilities. Pilings installed to establish osprey nests are also included. Should primary use of the permitted structure change, a permit modification must be requested.
- b. This work does not qualify for the [RP](#) if it involves dredging or filling. In that event, separate Department of the Army authorization will be required. Authorization of such structures does not imply that a future dredging proposal to provide access would be approved.
- c. Special Conditions 9 and 10 for Structures apply to this activity.

#### **10. Crab pounds:**

- a. Crab pounds are authorized by this [RP](#), but crab pounds in Mailboat Harbor and adjacent waterways at Tangier Island, Virginia must be constructed outside the hatched areas shown on the map entitled "Structures at Mailboat Harbor" which may be obtained from the Corps Eastern Virginia Regulatory Section
- b. Special Conditions 9 and 10 for Structures apply to this activity.

#### 11. Submerged sills:

- a. For the purpose of this [RP](#), a submerged sill is defined as a low, detached structure constructed near shore and parallel to the shoreline for the purpose of building up an existing beach by trapping and retaining sand in the littoral zone. Because a sill acts like a natural bar, it is most effective when constructed at or near the mean low water line and low enough to allow wave overtopping.
- b. Submerged sills are usually constructed of sand bags, but may be constructed of riprap, gabion baskets, concrete, or timber. The materials should be of sufficient weight or adequately anchored to prevent their being dislodged and carried about by wave action. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of sills. As the design and location of sills is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.
- c. The beach nourishment area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
- d. Submerged sills may not be connected to the upland or constructed in conjunction with groins or other erosion control structures. Such structures will require individual Department of the Army review.
- e. This [RP](#) authorizes beach nourishment landward of the sills provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this Regional Permit is one acre.
- f. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- g. The beach nourishment material will not be placed in or affect any wetlands, submerged aquatic vegetation, or shellfish beds.
- h. The [District Commander](#) will require an individual Department of the Army permit for any project which he/[she](#) determines to have greater than minimal individual or cumulative impacts.

- i. Please note that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and the applicant proposes to either add to or replenish the area previously nourished, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species.
- j. Special Conditions 1 - 8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

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## 12. Low breakwaters:

- a. For the purpose of this RP, a breakwater is defined as a structure constructed parallel to and channelward of a shoreline for the purpose of reducing incoming wave energy.
- b. This RP authorizes low breakwaters constructed close to shore for the purpose of erosion protection by reducing wave height and thereby reducing the erosive power of the waves reaching the shoreline. This permit does not include high breakwaters constructed farther offshore for the purpose of creating quiet water for the protection of a boat harbor.
- c. The beach nourishment area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
- d. Under this RP, a breakwater may be a single structure or a series of structures separated by gaps, but may not be connected to the upland or constructed in conjunction with other land attached structures. Such structures will require individual Department of the Army review.
- e. Breakwaters may be constructed of quarry stone, gabion baskets, concrete or timber. However, as breakwaters are barriers to the forces of waves, they should be massive enough to resist the full power of the maximum expected wave energy. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of breakwaters. As the design and location of breakwaters is site specific, it is suggested that the Shoreline Erosion Advisory Service or the Virginia Institute of Marine Science be consulted for advice.
- f. Included in this permit are floating breakwaters which filter energy from the incoming waves as they pass through the device, thereby reducing wave energy reaching a shoreline or harbor. Floating breakwaters should be adequately anchored to prevent their being dislodged by wave action.
- g. This RP authorizes beach nourishment landward of the breakwaters provided the nourishment is for erosion control (and not solely recreational activities). Planting of vegetation to stabilize the nourishment area may be required by the Corps, where

appropriate. The maximum beach nourishment area within waters of the United States that can be authorized under this RP is one acre.

- h. All material proposed for beach nourishment must be of grain size comparable with the existing beach. All material will be obtained from either an upland source, a borrow pit, or a dredging project approved by the Corps.
- i. The beach nourishment material will not be placed in or affect any wetlands, submerged aquatic vegetation, or shellfish beds.
- j. The District Commander will require an individual Department of the Army permit for any project which he/she determines to have greater than minimal individual or cumulative impacts.
- k. Please be aware that beach nourishment projects may result in the creation of suitable habitat for various federally listed threatened or endangered species. If this occurs and you wish to either add to or replenish the area previously nourished, the Corps will consult with the Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to insure the work does not adversely affect or jeopardize a federally listed or proposed threatened or endangered species. Deleted: You should Deleted: need to
- l. Special Conditions 1 - 8 for Discharges and Special Conditions 9 and 10 for Structures apply to this activity.

### 13. Aquaculture/Mariculture Activities:

- a. This authorization is limited to the bottom and suspended culturing and harvesting of bivalve mollusks in the intertidal and subaqueous areas of navigable waters. Activities covered include: deployment and maintenance of buoys, rafts, trays, and other equipment associated with the activity, and work including temporary wet storage, and harvesting.
- b. The aquaculture activity area and any elevated structures within the area shall be marked as prescribed by the United States Coast Guard in accordance with 33 CFR 64. The permittee must contact the United States Coast Guard, Aids to Navigation Branch at (757) 398-6230 to ascertain the proper markings for the activity. Aids to navigation shall be deployed and maintained as appropriate.
- c. ~~Note that traditional shellfish seeding activities are authorized by Nationwide Permit 4—Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities, provided the activity does not occur in wetlands or vegetated shallows. The Corps Nationwide Permits and Conditions can be found in 33 CFR 330 Appendix A published in Volume 61, Number 241 of the Federal Register dated December 13, 1996.~~
- c. No aquaculture activity shall occur within beds of submerged aquatic vegetation or saltmarsh, nor shall such vegetation be damaged or removed. Should an area become colonized by submerged aquatic vegetation or saltmarsh after an authorized aquaculture activity is installed, the activity shall be allowed to remain, however, no expansion into newly colonized areas is authorized by this regional permit. Information on the location

of submerged aquatic vegetation can be obtained from the Norfolk District Corps of Engineers (at telephone (757) 201-7652) and from the Virginia Institute of Marine Science (at telephone (804) 642-7332).

- d. An aquaculture activity will not for this RP if it will have more than minimal adverse effects on avian resources such as, but not limited to: shore birds, wading birds, or members of the waterfowl group. This includes nesting, feeding or resting activities by migratory birds identified at 50 CFR 10.13.
- e. An aquaculture activity will not qualify for this RP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or predatory fish.
- f. No aquaculture activity or vehicular access to the activity shall occur in such a way as to negatively impact coastal or wetland vegetation.
- g. Special Conditions 9 and 10 for Structures apply to this activity.

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#### 14. Commercial moorings associated with another project and temporary in nature.

- a. This permit may only be used if the request is directly associated with a permitted project such as a bridge, construction, or dredging project.
- b. This authorization is valid only for the duration of the associated project. Once the project is completed, the mooring must be removed.
- c. Special condition 9 and 10 for structures apply to this activity as well as the general conditions listed in the regional permit.

#### ~~15. State owned and operated artificial reefs within State waters~~

**Comment [REG4]:** Activity #15 has been omitted because they are now authorized under the RP-20.

- ~~a. This authorization is limited to State owned and operated reefs located exclusively in waters of the Commonwealth of Virginia and are limited to fin fishing reefs and reefs established for oyster replenishment or research.~~
- ~~b. The Corps of Engineers will evaluate each proposal to ensure impact to the environment, navigation, endangered species, historical resource or special aquatic sites are not more than minimal.~~
- ~~c. Materials used in the construction of these reefs are limited to materials historically used for shell and fin fishing reefs. They must be free of hazardous materials unless specifically authorized by the Corps of Engineers. Activities covered include but are not limited to deployment and maintenance of buoys, rafts trays, and other equipment associated with the activity, and work including temporary wet storage and harvesting.~~
- ~~d. Special condition 9 and 10 for structures apply to this activity as well as the general conditions listed in the regional permit.~~

## VI. SPECIAL CONDITIONS FOR DISCHARGES:

1. If the activity involves a discharge of dredged or fill material, the discharge must be accomplished in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act ("CWA") and published in 40 CFR 230.
2. No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, asphalt etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).
3. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.
4. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.
5. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.
7. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
8. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-construction elevations.

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## VII. SPECIAL CONDITIONS FOR STRUCTURES:

1. The permittee must install and maintain, at his/her expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on the authorized facilities. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704, telephone number (757) 398-6230.
2. The permittee hereby acknowledges and recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by wash from passing vessels. The issuance of this RP does not relieve the permittee from taking all proper steps to ensure the integrity of the structure permitted herein and to safeguard the safety of boats moored thereto from damage by waves. The permittee hereby acknowledges that the United States has no involvement or responsibility or liability of any kind for any such damage and agrees that it shall not hold the U.S. liable or involve the U.S. in any actions or claims regarding any such damages.

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## VIII. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under Regional General Permits (RGP).

1. **Geographic jurisdiction.** This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. **Compliance Certification.** A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project.
3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.
5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
6. **Single and complete projects.** This RGP shall only be applied to single and complete projects. For purposes of this RGP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.
7. **Multiple general permit authorizations.** This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RGP) for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RGPs does not exceed the acreage limit of the NWP/RGP with the highest specified acreage limit.
8. **Permit on-site.** The permittee shall ensure that a copy of the RGP and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

#### **General Conditions Related to National Concerns:**

9. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Norfolk District with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the



potential to affect, the applicant shall not begin the activity until notified by the Norfolk District that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Norfolk District is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Norfolk District of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

10. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
11. **National lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.
12. **Endangered species.** No activity is authorized which:
  - Is likely to jeopardize the continuing existence of a threatened or endangered species, or species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species
  - Would result in a lethal or non-lethal “take” of any threatened or endangered species of fish or wildlife without an incidental take statement from the FWS

Applicants shall include, in their permit applications, information regarding the presence of any federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work. Information regarding threatened or endangered species may be obtained directly from the FWS’ Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or the National Marine Fisheries Service Habitat Conservation Division at James J. Howard Marine Sciences Laboratory, 74 Magruder Road, Highlands, NJ 07732.
13. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

14. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
15. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Norfolk District, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
16. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RGP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
17. **Real estate.** Activities authorized under this RGP do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7736 or at the address listed on the front page of this permit.
18. **Environmental Justice.** Activities authorized under this RGP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
19. **Federal liability.** In issuing this RGP, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RGP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

#### **General Conditions Related to Minimizing Environmental Impacts:**

20. **Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
21. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
22. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to their pre-construction contours as soon as they are no longer needed. Once restored to their natural contours, their soil must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.
23. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
24. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Norfolk District has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.
25. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management

practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.

26. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
27. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
28. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.
29. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake.

#### **General Procedural Conditions:**

30. **Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RGP, as deemed necessary on a case-by-case basis.
31. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
32. **Property rights.** This General Permit does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
33. **Modification, suspension, and revocation.** This RGP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
34. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
34. **Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this RGP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
35. **False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.

36. **Abandonment.** If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.
37. **Transfer of authorization.** In order to transfer authorization under this RGP, the transferee or permittee must supply the Norfolk District with a written request. Such transfer is effective upon written approval by the Norfolk District.
38. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

**General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:**

39. **Time extensions.** If a permittee is unable to complete the work authorized under this general permit in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Norfolk District for consideration at least one month prior to the expiration of the permit authorization.
40. **Expiration of this Regional Permit.** Unless further modified, suspended, or revoked, this general permit will be in effect until August 14, 2013. Upon expiration, it may be considered for revalidation. Pursuant to 33 CFR 325.6(c), activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a RGP will remain authorized provided the activity is completed within twelve months of the date of the RGP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). Activities completed under the authorization of a RGP which was in effect at the time the activity was completed continue to be authorized by that RGP.

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Date

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Dionysios Anninos  
Colonel, Corps of Engineers  
Commanding